

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9473 OF 2005

Shri Jawahar Balwant Mantri

..Petitioner

v/s.

The Sub-Divisional Officer,
Walwa, Dist.Sangli and others
Respondents

..

Mr.A.M.Kulkarni for the petitioner.

Mr.P.M.Patil, Assistant Government Pleader for the respondent
No.1.

CORAM : R.M.LODHA &
NARESH H. PATIL, JJ.

DATED : 24TH JULY, 2006.

P.C.

Heard Mr.A.M.Kulkarni, counsel for the petitioner.

2. Prior to the present writ petition, the petitioner filed writ petition No.8371 of 2003 before this court seeking payment of compensation in terms of the award dated 29.6.1981 passed under the Bombay Personal Inam Abolition Act, 1952.

3. In response to the said writ petition, the State Government filed reply affidavit and stated therein that the papers in the matters were misplaced from the office of the Sub-Divisional Officer, Walwa, District-Sangli and that the said office would reconstruct the file and decide the case of the petitioner within three months. Based on the representation made by the respondents, this court disposed of the writ petition on December 7, 2004 and directed the respondents to decide the claim of the petitioner within a period of three months from the date of the order.

4. Thereafter, the claim of the petitioner was decided by the Sub-Divisional Officer, Walwa Division, Islampur and the communication was sent to the Division Officer, Revenue and Forest Department, Mantralay, Mumbai on 28.4.2005 that as per the award dated 29.6.1981, the interest at the rate of 4% on the award of compensation was payable and the total amount of compensation payable to the petitioner is Rs.1,79,564/-. The Sub-Divisional Officer, accordingly, requested the Division Officer to allow the amount of award to the extent of Rs.1,79,565/-. It is this communication which is under challenge in this writ petition.

5. The award under the Bombay Personal Inam Abolition Act, 1952 came to be passed on 29.6.1981. Since the payment as per the said award was not made to the petitioner, the writ petition was filed earlier before this court. As by that time, the office of the Sub-Divisional Officer has misplaced the papers, at the request of the Sub-Divisional Officer this court granted three months time to

decide the matter. Now an amount of Rs.1,79,564/- has been found payable as per the award dated 29.6.1981. In our considered view, the correctness of the said determination cannot be examined in the extraordinary jurisdiction under Article 226 of the Constitution of India. If the petitioner is aggrieved thereby, he must take recourse to the remedy provided under section 11 of the Bombay Personal Inam Abolition Act. We find no merit in the contention of the counsel for the petitioner that in the order passed by this court on 7th December, 2004, the liberty has been granted to the petitioner to file fresh petition. As to whether the computation has been made correctly by the Sub-Divisional Officer or not, is a question of fact and, obviously, this court is not an appropriate forum for determination of the question of fact. When the liberty was granted to the petitioner to file fresh writ petition in the order dated December, 7, 2004, what the court intended was that if the claim of the petitioner was rejected by the Sub-Divisional Officer and no compensation is held payable, the petitioner may file fresh writ petition. The court never intended that the correctness of the computation can be agitated by the petitioner by filing fresh writ petition.

6. Writ petition, accordingly, does not deserve to be entertained. The petitioner shall be at liberty to pursue the remedy provided under section 11 of the Bombay Personal Inam Abolition Act, 1952. The time during which the writ petition remained pending shall be excluded in computing the limitation for filing the appeal.

Disposed of accordingly.

(R.M.LODHA, J.)

(NARESH H. PATIL, J.)